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FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

In the Matter of)

)
 Deployment of Wireline Services Offering)
 Advanced Telecommunications Capability)

CC Docket No. 98-147

OPPOSITION OF COVAD COMMUNICATIONS COMPANY

Covad Communications Company (Covad), by its attorney, hereby submits its opposition to SBC Communications Inc.'s (SBC) and Qwest Corporation's (Qwest) petitions for conditional waiver. Although Covad responds specifically to the SBC and Qwest requests, both BellSouth and Verizon have submitted "me too" requests to the Commission, and these comments in opposition should be applied to those requests as well.

Both SBC and Qwest request waivers of the 90-day provisioning interval adopted in the *Collocation Reconsideration Order*.¹ In that proceeding, the Commission concluded that incumbent LECs must provide collocation to a requesting carrier within 90 days.² The Commission specifically required incumbents to implement the new provisioning interval immediately, by amending their state tariffs or Statements of Generally Available Terms and Conditions ("SGATs") to bring them "into compliance

¹ In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, *Order on Reconsideration and Second Further Notice of Proposed Rulemaking and Fifth Further Notice of Proposed Rulemaking*, CC Docket Nos. 98-147, 96-98 (rel. August 10, 2000) (*Collocation Recon Order*).

² *Id.* ¶ 33.

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with the national standards.³ Furthermore, the Commission required ILECs to offer the 90-day interval when negotiating interconnection agreements, and to amend an existing agreement with a change-of-law provision immediately.⁴

The Commission provided a procedural mechanism for incumbents to request provisioning intervals longer than 90 days. Specifically, the Commission concluded that an incumbent LEC may “request . . . that the state set intervals longer than the national standards.”⁵ Importantly, the Commission required that such a petition for relief be filed concomitant with the changes necessary to comply with the 90-day interval.⁶ Thus, the Commission made clear that incumbents could not avoid the 90-day provisioning interval by simply filing a request for a longer interval with every state Commission in an effort to delay the shorter interval’s effective date.

And yet all BOCs are now before the Commission attempting to do at the federal level what the Commission specifically barred them from doing at the state level.⁷ Claiming that their systems may not be able to handle the new, shorter interval, the BOCs are attempting to undo the Commission’s procompetitive provisioning rules by claiming lack of preparedness to comply with them. The Commission made quite clear in its *Collocation Reconsideration Order* that because the 90-day interval may not be achievable through current processes, “many incumbent LECs will have to improve their

³ *Id.* ¶ 36.

⁴ *Id.* ¶ 33-34.

⁵ *Id.* ¶ 36.

⁶ *Id.* ¶ 33.

⁷ The Commission should also take note of Qwest’s “alternative” collocation provisioning interval plan, which it intends to file with all of its state commissions. See *Qwest Waiver Request* at Attachment B. Because Qwest believes that the FCC rules setting forth the 90-day interval “are not realistic,” Qwest has unilaterally decided to ignore them. *Id.* at 2. Thus the state commission waiver request that the FCC implemented, and which Covad strongly disagrees with, is now being used by Qwest as a means to establish whatever intervals Qwest feels like establishing. The Commission must prevent Qwest from gaming the system by filing its own intervals with state commissions and effectively ignoring those intervals established by the Commission.

collocation provisioning performance significantly in order to meet this interval.”⁸ Thus, the Commission cannot permit these same incumbents to return three months later and explain how, rather than prepare to comply with the Commission’s rules, they have chosen to devote their resources to preparing arguments as to why they cannot comply. In imposing the 90-day provisioning interval, the Commission already weighed “competing considerations,” including the ability of incumbent LECs to comply with the new interval.⁹ In addition, the Commission has pending before it petitions for reconsideration of the provisioning intervals – seeking both shorter and longer intervals. Thus, there is no justification for considering the extraordinary relief sought here.

To the extent that the BOC petitioners argue that they should not be required to amend their SGATs where a state commission has allowed the SGAT to go into effect without established a provisioning interval in that state, the Commission should reject this effort to escape from its requirements. The Commission intended for the 90-day interval to take effect unless a state commission established a contrary interval. Had the Commission intended to grandfather all existing intervals, it would not have implemented a national interval and required incumbent LECs to make it available immediately as an amendment to interconnection agreements with change-of-law provisions. An incumbent LEC cannot avoid federal law simply by claiming that it has an SGAT in place.

Finally, the Commission should reject SBC’s request to “waive” the 90-day interval and instead utilize a staggered interval based on the number of collocation requests submitted by an individual carrier.¹⁰ SBC contends that its proposed new rule

⁸ *Id.* ¶ 28.

⁹ *Id.* ¶ 27.

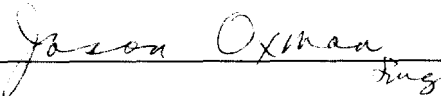
¹⁰ SBC Petition for Conditional Waiver at 2.

(for it is a rulemaking request, not a waiver request) would benefit competitive LECs.¹¹ Covad's response is simple: a longer interval does not hold any benefit whatsoever for any party other than SBC and its BOC brethren. To the extent SBC or any other BOC has too many collocation applications to process, it needs to hire more people to process the applications, not delay competition by avoiding its provisioning obligations. If a BOC must seek relief from a state commission, a mechanism is already in place for it to do so.¹² SBC's waiver request is nothing more than an attempt to completely undo the Commission's rules and revert back to the dark ages of unilateral BOC control over provisioning intervals.

CONCLUSION

For the foregoing reasons, the Commission should deny the various BOC waiver petitions.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Jason Oxman". The signature is written in dark ink and is positioned above a horizontal line.

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¹¹ *Id.* at 4.

¹² *Collocation Recon Order* ¶ 37.